IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.224 of 2007

Judgment reserved on: 28.5.2007

Date of Decision: June 15, 2007

Dhanbir & anr. …Petitioner.

Versus.

State of H.P.& ors. ….Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Acting Chief Justice..
The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the petitioner(s): Ms. Jyotsna Rewal Dua, Advocate.

For the respondent(s): Mr. R.M.Bisht, Deputy Advocate General, for Respondents No.1 to 4

Mr. Bimal Gupta, Advocate, for respondent No.5.

Deepak Gupta, ACJ.

By means of this writ petition, the petitioners who are residents of village Bhailla, Gram Panchayat Nagheta, Tehsil Paonta Sahib, District Sirmaur, H.P, have prayed that the headquarters of Gram Pachayat, Nagheta which are at village Bhailla, be permitted to continue there and the respondents No. 1, 2 & 4 be directed to ensure that the record of Gram Panchayat, Nagheta is brought back to the Panchayat Ghar at Bhailla.

The brief facts necessary for disposal of the case are that Gram Panchayat Nagheta was set up prior to 1964 under the provisions of H.P. Panchayat Raj Act, 1952 (hereinafter referred to as the 1952 Act). A perusal of the 1952 Act shows that there was no provision for fixing the headquarters of a Gram Panchayat. The petitioners have attached a resolution with the writ

petition as Annexure P2 passed by the Gram Sabha in its meeting held on 9.3.1966. One of the decisions taken was that the Panchayat Ghar should be constructed at village Bhailla. This resolution was again confirmed by another resolution dated 3.9.1966. The petitioners have also attached a copy of the jamabandi for the year 1965-66 of Mauja Bhailla in which khasra No. 27 measuring 0-5 bigha has been shown in the possession of Gram Panchayat, Nagheta and it was also recorded that on the land there is a Gair Mumkin Panchayat Ghar. To the similar effect is the jamabandi for the year 1998-99 (Annexure P5) . Some other material has been placed on record to show that the funds were allotted by the Government for construction of the Panchayat Ghar at Bhailla. According to the petitioners on 17.10.2006, respondent No.5 who is the Pradhan of Gram Panchayat, Nagheta and belongs to village Nagheta decided to shift the record from the Panchayat Ghar, Bhailla to Nagheta and he without any legal authority or justification shifted the record. Complaints were lodged with the various authorities, but to no avail. Thereafter the petitioners moved this court by means of the present writ petition.

The stand of the State Government is that the headquarters of Gram Panchayat, Nagheta were never shifted to Bhailla and the construction of the Panchayat Ghar was never approved by the government at any point of time. It is further alleged that a letter was received from the Deputy Director, Panchayati Raj Department along with Resolution No. 4 passed by the Gram Panchayat, Nagheta in its meeting held on 18.2.2007 which clearly shows that the headquarters of Gram Panchayat, Nagheta had never been fixed at Bhailla but were fixed at Nagheta itself. According to the State Government, the headquarters of Gram Panchayat, Nagheta were notified vide notification dated 26.12.1972 at village Nagheta itself. It is further alleged that the headquarters were never shifted to Bhailla and, therefore, the petitioners have no case whatsoever. It is further alleged that 2 biswas of village land in village

Nagheta is in possession of Gram Panchayat, Nagheta in which the building of Panchayat Ghar already exists. On merits, it is urged that the Gram Panchayat, Nagheta is functioning from village Nagheta.

Reply to the writ petition has also been filed by respondents 5. In addition to the defence taken up by the State, according to respondent No. 5 the headquarters of Gram Panchayat, Nagheta were notified at village Nagheta itself and Panchayat Bhawan was constructed on 2 biswas of land on khasra No. 188 and has been functioning there since then. According to respondent No. 5, the Gram Panchayat Nagheta has been functioning from Panchayat Bhawan at village Nagheta since long. According to the respondents at one point of time since the office of Gram Panchayat Nagheta at Nagheta required repairs, therefore, temporary operations were started from village Bhailla. It is further alleged that khasra No. 188 is already in possession of Gram Panchayat, Nagheta and was never in possession of the school as shown in the revenue record.

Rejoinders to both the replies have been filed. The petitioners have reiterated the stand taken in the petition and have annexed more documents along with the rejoinders to show that the Gram Panchayat has been functioning from village Bhailla and not from village Nagheta.

The main dispute in this case is whether the headquarters of Gram Panchyat, Nagheta were ever fixed and if so, at which place ? Another question which arises is that factually where did the Gram Panchyat, Nagheta function from?

On 10.5.2007 we had passed a detailed order which reads as follows:-

> "The dispute in this petition is whether the headquarter of the Gram Panchayat Nagheta is at Nagheta or is at Bhailla. According to the petitioner, the headquarter has always functioned at Bhailla. The stand of the State as well as private respondent is that the headquarter

of Gram Panchayat was at Nagheta. We had issued notice in this petition and had directed that reply to the petition be filed. The said reply has been filed alongwith affidavit of Shri Rajinder Singh Negi, Deputy Commissioner, Sirmour. Alongwith the reply, Annexure R-4 was filed, which is an extract of the Notification issued by the Government of Himachal Pradesh and published in the Gazette on 22nd September, 1972. In this extract, only Serial Number of the columns are given and description of the columns is not there. As far as Nagheta Panchayat is concerned, under Column No.3 the word Nagheta has been repeated in brackets. The respondents filed a translation of Annexure R-4 and in this translation, the heading of Column No.3 has been given as follows:-

"Name of Gram Panchayat with its headquarter."

On the last date, Mrs. Jytosna Rewal Dua, Advocate, had submitted that this was not a correct translation. We had called for original record and we found that in the original Hindi version of the Notification of Annexure R-4, under column No.3 reference is made only to the name of the gram Sabha and there is no mention of headquarter.

We are therefore prima-facie of the view that purposely a wrong translation was filed with the reply with a view to mislead the Court. However, before taking any further action in the matter, we issue notice to Shri Rajinder Singh Negi, Deputy Commissioner, Sirmour, to explain why action should not be taken against him. Let him file reply on or before 25th May, 2007 and list the matter on 28th May, 2007, when Mr. Rajinder Singh Negi, Deputy Commissioner, Sirmaur will remain present in person."

The Deputy Commissioner has filed reply in pursuance to our orders and has submitted that in the translation the words "with its

headquarters" were wrongly mentioned. According to him while preparing the translation, the officer seems to have been influenced by notification dated 20.3.1978 in which there is clear mention of the name of the Gram Sabha constituted with the name of its headquarters. He has also submitted his unqualified apology for filing incorrect translation of the documents.

We have heard Ms. Jyotsna Rewal Dua, learned counsel for the petitioners and Shri R.M.Bisht, learned DAG, for respondents No.1 to 4 and Shri Bimal Gupta, counsel for respondent No. 5.

As far as the factual aspect is concerned, the State during the course of arguments has candidly and clearly admitted that right from 1964 onwards the Gram Panchayat, Nagheta has been functioning with its headquarters at Bhailla. It is admitted by the State that in actual fact the Panchayat Ghar was constructed at villagee Bhailla and Gram Panchayat, Nagheta functioned from there. No doubt, this fact is hotly contested by respondent No.5 but the material on record including the various resolutions, copies of the revenue record etc. clearly show that the Gram Panchayat, Nagheta was actually functioning from the Panchayat Ghar at village Bhailla.

Now coming to the legal aspect of the matter. According to the respondents, as per notification dated 5.8.1972, the headquarters of Gram Panchayat, Nagheta were fixed at Nagheta. To appreciate these arguments, it would be necessary to mention that under the 1952 Act, there was no provision in the Act empowering the State Government or any other officer to fix the headquarters of the Gram Panchayats. Power had been given to the State Government to frame rules under Section 135 of the Act and this power included the power to fix the time and place of meeting of Gram Sabha, Gram Panchayat, Tehsil Panchayat and Nyaya Panchayat etc. However, no rules have been brought to our notice wherein such powers has been exercised by the State Government and there is no material on record to show that the headquarters were fixed by the Government either at village Nagheta or

village Bhailla. This only leaves us with Annexures P2 & P3 referred to above which clearly indicate that the Gram Sabha had taken a decision to construct a Panchayat Ghar at village Bhailla. There is also material on record including Annexure P5 to show that funds were sought for from the Government for repairs of the Panchayat Ghar at village Bhailla.

The H.P.Panchayat Raj Act, 1952 was repealed by H.P.Panchayati Raj Act, 1968 (hereinafter referred to as the Act of 1968). This Act also did not give any power to the Government to fix the headquarters of the Gram Panhayats. This Act also empowered the State Government to frame rules in respect of various matters including the time and place of meeting of the Panchayats. The H.P. Panchayat Raj Rules have been framed under this Act and Rule 10 of the rules reads as follows:-

> "10. Place of meeting – (1) Every meeting of the Sabha shall be held at the headquarters of the Gram Panchayat and shall be presided over by the Pradhan or in his absence by the Up-Pradhan. If both Pradhan and Up-Pradhan are absent then such member of the Gram Sabha shall preside over the meeting as may be elected by members present in that meeting.
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> [(2) The headquarters of Gram Panchayat shall be fixed by the Deputy Commissioner of the District in each case and he shall also have the power to change it for the reasons to be recorded in writing]"

A perusal of Rule 10(2) clearly shows that the notification was issued on 15.2.1975 and published in the gazette on 1.3.1975. This is the only rule which authorizes any official to fix the headquarters of Gram Panchayat under the 1968 Act. It is clear that prior to the insertion of Rule 10(2) w.e.f. 1975, there was no power with the Government or with the Deputy Commissioner to fix the headquarters of Panchayats. Reliance has been placed on the notification dated 5.8.1972. The said notification reads as follows:-

> " English Translation of relevant extract Ann. P-5/1
> Notification
> Dated 5th August, 1972.

No. 36-62/72-Punch Sirmaur – In supersession of all the earlier notifications, which were issued from time to time regarding reorganization, re-fixation of the areas of the Gram Panchayats, the Governor of Himachal Pradesh in exercise of his powers under Sections 4(1) and 5(1) of the H.P. Panchayati Raj Act, 1968 (Act No. 19 of 1970), hereby refix the area of entire Gram Sabha of District Sirmaur. The names of villages included in Gram Sabha, are shown against the name of Gram Sabha.

Sr. No.	Name of Dev. Block	Name of Gram Sabha	Name of villages included in Gram\ Sabha
1 to			
53.	…….	…..	……
54.	Paonta	Nagheta (Nagheta)	1) Tonru 2) Dhandha Kala Amb 3) Kalatha 4. Badhana 5)Kalore 6) Angro 7) Nagheta 8)Kerka 9) Machla

Since the word "Nagheta" has been repeated within brackets under the column giving the name of Gram Sabha, the contention of the respondents is that this indicates that the headquarters of the Gram Panchayat were fixed at Nagheta. It may be true that by repetition of the word "Nagheta" some inference may be drawn that Nagheta Pancyayat is functioning from Nagheta but their can be no inference that the headquarters were fixed at Nagheta. First of all, this notification does not make any mention of fixing of the headquarters of the Gram Panchayat. Secondly, as observed above, under the Acts of 1952 and 1968, the Government had no power to fix the headquarters of Gram Sabha. If the State did not have the power to fix the headquarters, the Gram Sabha itself could have fixed its own headquarters. No material has been placed before us to show that the State Government had ever either fixed the headquarters of Gram Panchayat, Nagheta or had framed any rules as to where the meeting of the Panchayat was to be held. Further as already noted above, the rule empowering the Deputy Commissioner to fix the headquarters

came into force only in the year 1975 much after this notification was issued. Therefore, the notification dated 5.8.1972 cannot any stretch of imagination be said to fix the headquarters of Gram Panchayat, Nagheta at Nagheta.

The Act of 1968 was repealed by the Act of 1994 (hereinafter referred to as the Act). Section 3(2) of the Act empowers the Government after following the prescribed procedure to alter the headquarters of any Gram Sabha area. It is the admitted case of the parties that till date the State has not taken any action under Section 3(2) of the Act.

Keeping in view the entire facts and circumstances of the case, we are of the considered opinion that in actual fact the Gram Panchayat, Nagheta functioned from the Panchayat Ghar at village Bhailla for more than four decades. There is no material before us to show that the headquarters of Gram Panchayat, Nagheta were ever fixed at village Nagheta. Even otherwise, we are convinced that once the Gram Sabha has been functioning from village Bhailla then unless some specific action had been taken under Section 3 of the H.P.Panchayat Raj Act, 1994 altering the headquarters of the Gram Sabha, the respondents No. 1 to 4 could not have permitted the respondent No.5 to take the records of Gram Panchayat, Nagheta from the Panchayat Ghar at Bhailla to Nagheta.

We are not satisfied with the reply filed by Shri R.S.Negi to the notice issued to him in respect of the false translation filed in Court. His explanation that the translation was based on the notification of 20.3.1978 further makes his case worse. The notification of 1972 contained only four columns and the notification of 1978 consists of seven columns. It is in column No.5 that the following words are mentioned:-

> "…… Name of Gram Sabha
> and its headquarters
> created by excluded
> villages."

How could this column No.5 be transported to column No.4 of the 1972 notification which only mentions the name of the Gram Sabha. We have been repeatedly observing that the Administrative Officers are not careful while filing their affidavits in this Court. Sometime false affidavits are knowingly filed and sometime misleading affidavits are filed with a view to mislead this Court. Writ petitions are decided on the basis of affidavits and we expect from all the Administrative Officers to file complete and true affidavits before this Court. Even though we gave a notice to Shri R.S. Negi, Deputy Commissioner, Sirmaur to explain why action should not be taken against him, he has come up with an explanation which on the face of it is palpably wrong. Therefore, we are burdening him with exemplary costs of Rs. 5000/- which are to be paid by him personally. We also warn him that if any other case of this type comes to our notice, we shall not hesitate to take much more serious action.

In view of the above discussion, we allow the writ petition and direct that the headquarters of Gram Panchayat, Nagheta shall continue to be at village Bhailla and the said Gram Panchayat will function from Panchayat Ghar at Bhailla unless the headquarters of the said Gram Panchayat are altered by the State Government after following the provisions of the H.P.Panchayat Raj Act, 1994. Shri R.S.Negi, Deputy Commissioner, Sirmaur at Nahan, shall deposit the costs of Rs.5000/- within four weeks from today.

(Deepak Gupta), ACJ.

June_15, 2007. (Surinder Singh), J.

s.